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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/816,306	04/01/2004	Emanuela Keller	KELLER, E. ET AL. - 1	8572

25889 7590 01/23/2008

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EXAMINER	
LAURITZEN, AMANDA L	
ART UNIT	**PAPER NUMBER**
3737	

MAIL DATE	DELIVERY MODE
01/23/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/816,306	Applicant(s) KELLER ET AL.	
	Examiner A. Lauritzen	Art Unit 3737	

CT

–The MAILING DATE of this communication appears on the cover sheet with the correspondence address –

THE REPLY FILED 09 January 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.
   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: *See Continuation Sheet*. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: _____.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

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Continuation of 3. NOTE:

Further consideration and updated search are required. It is maintained that both the method and device are taught in the disclosure of Pfeiffer et al. and that Chen is used for the teaching of dividing into pulsatile and nonpulsatile components, the motivation for combining such a feature provided in the final Office action of 9 October 2007.

Continuation of 11. does NOT place the application in condition for allowance because:

Regarding claims 1 and 13, the claims do not particularly specify that a "single" signal is measured and it is further not clear how this feature distinguishes from the claims using a standard of obviousness. Examiner understands that the device of Pfeiffer accommodates measure of isolated signal(s). Further, the details of "absolute" vs. "relative" values are not necessarily inferred from the claim language.

Continuation of 11. does NOT place the application in condition for allowance because: Regarding the Applicant's arguments on page 8 stating that it is inappropriate to make the rejection final, see MPEP Section 706.07(a). Also, MPEP Section 2141 states, "Prior art is not limited just to the references being applied, but includes the understanding of one of ordinary skill in the art... The 'mere existence of differences between the prior art and an invention does not establish the invention's nonobviousness.'... The proper analysis is whether the claimed invention would have been obvious to one of ordinary skill in the art after consideration of all the facts." Upon reading the disclosure of Morris, it would be obvious to one of ordinary skill in the art of ultrasonography to utilize a solution other than conductivity enhancing fluid and to replace this fluid with the ultrasound equivalent. This analogy is not outside the knowledge of one of ordinary skill in the art and the admission of utilizing ultrasound as one of many power sources would lead one of skill in the art to this conclusion. Regarding the Applicant's arguments on "synchronization" and the reference to paragraph [187], the Examiner notes that "The time lapse between the inection of the solution and application of the ultrasound waves may be in the range of about zero seconds to about one hour." The Morris reference teaches reducing procedural time and would therefore provide energy to the fluid solution within this time period. Furthermore, at column 25, lines 7-19 Morris discusses providing temporal patterns of energy delivery. Regardless, the MPEP Section 2106 II. [C. Review the Claims] it is stated, "Any special meaning assigned to a term 'must be sufficiently clear in the specification that any departure from common usage would be so understood by a person of experience in the field of the invention.'" Paragraph [187] provides 17 lines of examples of synchromization. "An automatic controller may be used to synchroize the timing of the ultrasound application following the injection of the solution" provides that the ultrasound is applied after the solution is introduced. Beyond this, the timing can be anywhere from zero seconds to one hour.. Broadly interpretted, Morris provides for this. Regarding the "removal of aspirated tissue," it must be noted that Morris discloses the other limitations and the fact that it discloses additional structure not claimed is irrelevant.